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8 Health

*Exempt from filing fees pursuant to
Government Code section 6103*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
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13 SONIA ANGELL, MD, MPH, DIRECTOR,
14 CALIFORNIA DEPARTMENT OF
PUBLIC HEALTH,

Petitioner,

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16 v.

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18 LEGACY HEALTHCARE CENTER, LLC,
a California limited liability company;
19 ROSE GARDEN SUBACUTE &
REHABILITATION CENTER, LLC, a
20 California limited liability company; and
DOES 1 THROUGH 20, INCLUSIVE,

21 Respondents.
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Case No. 20STCP01013

**NOTICE OF RULING ON ORDER TO
SHOW CAUSE RE: CONFIRMATION
OF RECEIVER AND NOTICE OF
STATUS CONFERENCE**

Dept: 85
Judge: Hon. James C. Chalfant

24 NOTICE IS GIVEN that on June 5, 2020, the Court entered an order adopting its
25 tentative ruling confirming the appointment of the receiver in this matter. True and correct copies
26 of the Court's tentative ruling and its minute order adopting the tentative order as its ruling are
27 attached as exhibits 1 and 2, respectively.

28 NOTICE IS FURTHER GIVEN that the Court scheduled a Status Conference Re:

1 Receivership for October 13, 2020 at 1:30 p.m. in Department 85 of Stanley Mosk Courthouse,
2 located at 111 N. Hill St., Los Angeles, CA, 90012.

3 **NOTICE IS ALSO GIVEN** that the Court vacated the trial setting conference previously
4 scheduled for June 25, 2020.

5 Dated: June 11, 2020

Respectfully Submitted,

6 XAVIER BECERRA
7 Attorney General of California
8 JENNIFER M. KIM
Supervising Deputy Attorney General

9 */s/ Benjamin G. Diehl*

10 BENJAMIN G. DIEHL
11 Deputy Attorney General
12 *Attorneys for Petitioner Sonia Angell, MD,*
13 *MPH, Director of the California*
14 *Department of Social Services*

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EXHIBIT 1

Sonia Angell, MD, MPH, Director,
California Department of Public Health v.
Legacy Healthcare Center, LLC, et al.,
20STCP01013

Tentative decision on OSC re: confirmation
of receiver: granted

Petitioner Sonia Angell, MD, MPH, ("Angell" or "Director") Director of the California Department of Public Health ("Department") seeks confirmation of the court's March 13, 2020 order appointing Ernel Don Doyle, Jr. ("Doyle") as Receiver for the skilled nursing facilities known as Legacy Healthcare Center, located at 1570 North Fair Oaks Avenue, Pasadena, California 91103 ("Legacy Facility") and Rose Garden Healthcare Center, located at 1899 North Raymond Avenue, Pasadena, California 91103 ("Rose Facility") (collectively, "Facilities").

The court has read and considered the moving papers (no opposition was filed), and renders the following tentative decision.

A. Statement of the Case

1. Petition

Angell commenced this proceeding on March 11, 2020, alleging causes of action for appointment of receiver. The Petition alleges in pertinent part as follows.

Respondents Legacy Healthcare Center, LLC ("Legacy") and Rose Garden Subacute & Rehabilitation Center, LLC ("Rose") held licenses issued by the Department to operate the Legacy Facility and the Rose Facility, respectively. The Facilities are skilled nursing facilities under the regulatory supervision of the Department. Legacy operated the Legacy Facility and Rose operated the Rose Facility until February 5, 2020, when a duly appointed Temporary Manager assumed operation of each Facility, pursuant to Health and Safety Code section 1325.5.

Respondents, which are under common management, leased the two Facilities on April 16, 2016, and commenced operating them on that date. In June 2019, Respondents became delinquent on the rent for the Facilities. The owners of the Facilities filed unlawful detainer actions against Respondents on September 12, 2019. Respondents subsequently stipulated to settle the unlawful detainer action.

Respondents breached the terms of the settlement and on January 23, 2020 the court entered judgment against them in the unlawful detainer actions. As a result of those judgments, Respondents' lease agreements for the Facilities were terminated. Respondents no longer have the right to possess the Facilities. Respondents' license to operate the Facilities also expired on December 27, 2019 and they failed to renew their licenses or pay the required renewal fees. After December 27, 2019, Respondents were operating the Facilities with expired licenses.

Respondents have additionally failed to pay the required quality assurance fees to the Department for both Facilities. Beginning on January 24, 2020, Respondents further failed to pay wages due to employees of the Facilities, which caused many of the employees to threaten or actually leave their employment, jeopardizing the care and safety of the Facilities' residents.

The Department determined that Respondents' actions constituted grounds for the appointment of a Temporary Manager to operate the Facilities pursuant to Health and Safety Code section 1325.5. Accordingly, Seelig A. Cussigh HCO, LLC. ("Seelig") was appointed as

Temporary Manager, effective February 5, 2020.

Respondents have no right to control the Facilities and have operated them without a license. Respondents' conduct places the Facilities at risk of closure. The Facilities collectively offer 149 critically needed skilled nursing beds, and the Rose Facility additionally offers needed subacute care. Closure of the Facilities would force the involuntary and potentially traumatic transfer of the patients who receive care and deprive the community of needed health care resources.

The Department seeks the appointment of a receiver to facilitate the negotiation and execution of a Management and Operations Transfer Agreement ("MOTA") and/or a Change of Ownership ("CHOW") process, which will enable the Facilities to remain capable of providing critically needed services to the residents of the Facilities under the control of a new licensee.

2. Course of Proceedings

On March 13, 2020, Angell applied *ex parte* for immediate appointment of a receiver. The court granted the *ex parte* application and appointed Doyle as receiver. The court instructed Angell to electronically serve the order appointing receiver by March 16, 2020. The court ordered Angell to file a Receiver's bond in the amount of \$750,000, a TRO bond in the amount of \$1,500, and an *ex parte* bond in the amount of \$1,500.

According to proofs of service on file, Defendants were personally served with the Summons, Petition, and moving papers on March 13, 2020. Dov E. Jacobs, ("Jacobs"), Manager of Respondents, was electronically served with the Order appointing Receiver on March 16, 2020.

Doyle filed his Oath of Receiver on March 16, 2020.

On March 24, 2020, the court granted Angell's *ex parte* application for order reducing amount of receiver's bond, reducing the amount to \$100,000.

An undertaking in the amount of \$1,500 was filed on March 30, 2020 and the Receiver's bond in the amount of \$100,000 was filed on April 3, 2020.

On April 29, 2020, Angell filed a Notice of Non-Opposition.

B. Applicable Law

Receivers are agents of the court and may be appointed only when authorized by statute. Weil & Brown, California Procedure Before Trial, 9:734, 9(11)-B (The Rutter Group 2018); see Marsch v. Williams, (1994) 23 Cal.App.4th 238, 245. The principal source of authority to appoint a receiver is Code of Civil Procedure section 564.¹ Marsch v. Williams, (1994) 23 Cal.App.4th 238, 245.

Whenever circumstances exist indicating that continued management of a long-term health care facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to the patients, or there exists in the facility a condition in substantial violation of this chapter or the rules and regulations adopted pursuant to this chapter, or the facility exhibits a pattern or practice of habitual violation of this chapter or the rules and regulations adopted pursuant thereto, or the facility is closing or intends to terminate operation as a licensed long-term health care facility and adequate arrangements for relocation of residents have not been made at least 30 days prior to the closing or termination, the director may petition the superior

¹ All further statutory references are to the Code of Civil Procedure unless otherwise stated.

court for the county in which the long-term health care facility is located for an order appointing a receiver to temporarily operate the long-term health care facility in accordance with this article. Health & Safety Code §1327(a).

If at the conclusion of the hearing the court determines that adequate grounds exist for the appointment of a receiver and that there is no other reasonably available remedy to protect the patients, the court may issue an order appointing a receiver to temporarily operate the long-term health care facility and enjoining the licensee from interfering with the receiver in the conduct of his or her duties. The court shall in any such proceedings make written findings of fact and conclusions of law and shall require an appropriate bond to be filed by the receiver and paid for by the licensee. The bond shall be in an amount necessary to protect the licensee in the event of any failure on the part of the receiver to act in a reasonable manner. Health & Safety Code §1327(b).

The appointment of a receiver rests largely in the discretion of the trial court. Maggiora v. Palo Alto Inn, Inc., (1967) 249 Cal.App.2d 706, 710. Because the appointment of a receiver is a drastic remedy, courts will carefully weigh the propriety of such appointment, particularly if an alternative remedy is available. Hoover v. Galbraith, (1972) 7 Cal.3d 519, 528; City and County of San Francisco v. Daley, (1993) 16 Cal.App.4th 734, 745.

C. Statement of Facts²

The Facilities are licensed by the Department as skilled nursing facilities and are Medicare and Medi-Cal certified. Vivona Decl. ¶4, Exs. 1-2. The Facilities collectively have licenses for 149 skilled nursing beds, and the Rose Facility is licensed to offer subacute care. Vivona Decl. ¶4.

The licenses of Respondents to operate the Facilities expired on December 27, 2019. Vivona Decl. ¶5. Respondents failed to renew their licenses or pay the required renewal fees and have been operating the Facilities without a valid license since that date. Vivona Decl. ¶5. Respondents are required to pay the state-mandated Quality Assurance Fee ("QA Fee") as a condition for participating in the Medi-Cal program. Respondents have not paid QA fees for over two years, and together owe back payments of approximately \$1.4 million. Vivona Decl. ¶6.

On February 4, 2020, after the Department determined that conditions at the Facilities created a situation where the residents were in immediate danger of death or permanent injury by virtue of the failure of the Facilities to comply with federal or state requirements, Department Deputy Director T. Scott Vivona ("Vivona") appointed Seelig as the Temporary Manager of the Facilities. Vivona Decl. ¶8. Respondents did not challenge Seelig's appointment. Vivona Decl. ¶¶ 8-9, Exs. 3-6.

Doyle meets the statutory and regulatory qualifications to serve as the Receiver for the Facilities and is willing and able to serve as the Receiver. Doyle Decl. ¶6. Doyle holds licenses in California as a licensed vocational nurse and nursing home administrator, is a member of the

² Angell requests judicial notice of the Declaration of Arlene H. Rosales, including the attached exhibits, filed in LASC Case No. 20STCV04552, Arlene H. Rosales, et al. v. Legacy Healthcare Center, LLC, et al., filed February 5, 2020 (Ex. 1). The existence of Exhibit 1, but not necessarily the truth of its contents, is judicially noticed. Evid. Code §452(d); Sosinsky v. Grant, (1992) 6 Cal.App.4th 1548, 1551.

California Receiver's Forum, and has extensive relevant experience. Doyle Decl, ¶¶ 1-8, Ex. 1.

D. Analysis

Petitioner Angell seeks confirmation of the appointment of Doyle as Receiver. Angell states that appointment of a receiver is warranted under Health and Safety Code section 1327. The Facilities are skilled nursing facilities that are long-term care facilities as defined in Health & Safety Code section 1326. App. at 5; Vivona Decl. ¶¶ 3-4, Exs. 1-2. Respondents have not opposed the confirmation of the Receiver's appointment.

Angell provides evidence showing that the Facilities have failed to adequately safeguard their residents for many months and that continued management of the Facilities by Respondents would present a substantial probability or imminent danger of serious physical harm or death to the patients. Vivona Decl. ¶10, Ex. 6. The evidence also demonstrates that Respondents have failed to pay their employees and to meet other financial obligations, resulting in their operation of the Facilities with expired licenses and their eventual eviction. Vivona Decl. ¶¶ 5-6. Angell argues that this conduct constitutes a condition in substantial violation of applicable laws and regulations and Respondents have exhibited a pattern or practice of habitual violation of applicable laws and regulations, justifying confirmation of the Receiver's appointment. App. at 9.

Angell also asserts that there is no reasonable alternative to confirmation of the appointment of Receiver. The only alternative, a revocation of Respondent's licenses to operate the Facilities, would require the transfer of patients to new facilities. App. at 9-10. Angell argues that relocation is unfeasible as it would be potentially traumatic for the patients. App. at 10.

The evidence establishes that confirmation of the appointment of Receiver is warranted and necessary due to the substantial probability or imminent danger of serious physical harm or death to the patients and Respondents' violation of applicable laws and regulations.

Angell also asserts that Respondents have a history of misconduct and failure to cooperate with the Temporary Manager and should be enjoined from interfering with the Receiver and divested of possession and control of the Facilities, pursuant to Health & Safety Code sections 1327(b) and 1329(a). App. at 11-12.

The appointment of Ernel Don Doyle Jr. as Receiver for the Facilities is confirmed. The appropriate bonds have been posted. A receivership status conference is set for October 13, 2020 at 1:30 p.m.

EXHIBIT 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 85

20STCP01013

**SONIA ANGELL MD, MPH, DIRECTOR, CALIF. DEPT. OF
PUBLIC HEALTH vs LEGACY HEALTHCARE CENTER,
LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, et
al.**

June 5, 2020

11:00 AM

Judge: Honorable James C. Chalfant
Judicial Assistant: J. De Luna
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order - Order to Show Cause Re: Confirmation of Receiver

Order to Show Cause Re: Confirmation of Receiver was initially set for hearing on 4/7/2020, then continued to 4/28/2020 and finally continued to 6/25/2020, due to the spread of Covid-19, the need for social distancing, and the states of emergency having been declared by Governor Gavin Newsom and President Donald Trump, and the General Orders issued by the Presiding Judge and Statewide Orders issued by the Chief Justice. Parties were directed to file their briefs on schedule as if the initial hearing date remained as set.

The Court distributed its tentative ruling on the order to show cause hearing to Petitioner's counsel on 6/3/2020. Petitioner notified opposing counsel of the court's tentative ruling on 6/4/2020. Petitioner's counsel notified the Court on 6/4/2020 that he submits on the tentative ruling.

The court rules as follows:

Petitioner Sonia Angell, MD, MPH, Director of the California Department of Public Health seeks confirmation of the court's March 13, 2020 order appointing Ernel Don Doyle, Jr. as Receiver for the skilled nursing facilities known as Legacy Healthcare Center, located at 1570 North Fair Oaks Avenue, Pasadena, California 91103 and Rose Garden Healthcare Center, located at 1899 North Raymond Avenue, Pasadena, California 91103 (collectively, "Facilities").

The court has read and considered the moving papers (no opposition was filed), and renders the following tentative decision:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 85

20STCP01013

**SONIA ANGELL MD, MPH, DIRECTOR, CALIF. DEPT. OF
PUBLIC HEALTH vs LEGACY HEALTHCARE CENTER,
LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, et
al.**

June 5, 2020

11:00 AM

Judge: Honorable James C. Chalfant

Judicial Assistant: J. De Luna

Courtroom Assistant: None

CSR: None

ERM: None

Deputy Sheriff: None

The appointment of Ernel Don Doyle Jr. as Receiver for the Facilities is confirmed. The appropriate bonds have been posted.

The court's tentative ruling is adopted as the final order of the court and is filed this date.

Status Conference Re: Receivership is scheduled for 10/13/2020 at 01:30 PM in Department 85 at Stanley Mosk Courthouse.

Accordingly , the Order to Show Cause Re: Confirmation of Receiver scheduled for 06/25/2020, and Trial Setting Conference scheduled for 06/25/2020 are advanced to this date and vacated .

Petitioner is directed to give notice.

Certificate of Mailing is attached.

ATTACHMENT

SECTION 6. DECLARATION OF MAILING: A copy of this Request for Entry of Default was mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

1. Legacy Healthcare Center, LLC:

Legacy Healthcare Center, LLC
1570 N. FAIR OAKS AVENUE
PASADENA CA 91103

Legacy Healthcare Center, LLC
11600 W. WASHINGTON BLVD.
LOS ANGELES CA 90066

2. Rose Garden Subacute & Rehabilitation Center, LLC:

Rose Garden Subacute & Rehabilitation Center, LLC
1899 N. RAYMOND AVE.
PASADENA CA 91103

Rose Garden Subacute & Rehabilitation Center, LLC
11600 W. WASHINGTON BLVD.
LOS ANGELES CA 90066

DECLARATION OF SERVICE BY ELECTRONIC MAIL and U.S. MAIL

Case Name: **Rosales, Arlene H. v. Legacy Healthcare Ctr., LLC; Rose Garden Subacute & Rehab. Ctr. LLC, et al.**

Case No.: **20STCV04552**

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 11, 2020, I served the attached **NOTICE OF RULING ON ORDER TO SHOW CAUSE RE: CONFIRMATION OF RECEIVER AND NOTICE OF STATUS CONFERENCE** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 11, 2020 at Los Angeles, California.

Stacy McKellar

Declarant

/s/ Stacy McKellar

Signature

LA2020500725

DECLARATION OF SERVICE BY ELECTRONIC MAIL and U.S. MAIL

Case Name: **Rosales, Arlene H. v. Legacy Healthcare Ctr., LLC; Rose Garden Subacute & Rehab. Ctr. LLC, et al.**

Case No.: **20STCV04552**

SERVICE LIST

Legacy Healthcare Center, LLC
1570 N. Fair Oaks Avenue
Pasadena CA 91103

Legacy Healthcare Center, LLC
11600 W. Washington Blvd.
Los Angeles CA 90066

Rose Garden Subacute & Rehabilitation
Center, LLC
1899 N. Raymond Ave.
Pasadena CA 91103

Rose Garden Subacute & Rehabilitation
Center, LLC
11600 W. Washington Blvd.
Los Angeles CA 90066

Dov E. Jacobs,
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Dawn Coulson,
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Michael Bubman,
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